No. 160

FILED
FEB 8 1899
JAMES H. McKENNEY,
Clerk.

Brief of Cutcheon for D. E. (Gnds.)

SUPREME COURT OF THE UNITED STATES.

October Term, 1898.

Term No. 607.

Filed Feb. 3, 1899.

MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, ET AL., PLAINTIFFS IN ERROR,

vs.

HENRY A. GARDNER, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

Motion Papers and Brief for Defendant in Error on Motion to Dismiss or Affirm.

F. W. M. CUTCHEON,
Counsel for Defendant in Error.

1 # SUPREME COURT OF THE UNITED STATES,

October Term, 1898.

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MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, ET AL., PLAINTIFFS IN ERROR,

vs.

HENRY A. GARDNER, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

NOTICE OF MOTION TO DISMISS WRIT OF ERROR OR TO AFFIRM.

To A. E. Clarke, Esq., Counsel for Plaintiffs in Error above named, Minneapolis, Minn.

Sir:—You will please take notice that the defendant in error above named will upon Monday, the 27th day of February, 1899, at the opening of court on said day, or as soon thereafter as counsel can be heard, move the Supreme Court of the United States at the court-room of said Supreme Court in the Capitol in the City of
2 Washington, D. C., to dismiss the writ of error to the Supreme Court of the State of Minnesota heretofore and on or about the 21st day of October, 1898, sued out of said Supreme Court of the United States by said plaintiffs in error above named, and for such other and further order or relief as to the court may seem just.

Further take notice that said motion will be based upon the ground that said Supreme Court of the United States has no jurisdiction of said cause above entitled, because:

1. This cause does not involve a Federal question; that is to say, there has not been drawn into question in this cause the validity of any treaty or statute of, or any authority exercised under, the United States, the decision whereon has been against the validity thereof. Nor has there been drawn into question in this cause the validity of any statute of, or any authority exercised under, any state on the ground that such statute or authority is repugnant to the Constitution, treaties or laws of the United States, the decision

whereon has been in favor of the validity thereof. Nor, has any claim been made in this cause of or to any title, right, privilege or immunity under the Constitution, or any treaty or statute of,
3 or commission held or authority exercised under the United States, the decision whereon was against the title, right, privilege or immunity so set up or claimed.

2. If any Federal question was involved in this cause when the same was pending in the Supreme Court of Minnesota upon appeal, whatever the decision of that court thereon (if any) may have been, another question, not Federal, was also involved and decided adversely to the plaintiffs in error, and the decision of this latter question is sufficient to sustain the judgment of that court irrespective of what its decision (if any) may have been upon such Federal question.

Further take notice that at the same time and place, said defendant in error will move said Supreme Court of the United States to affirm the judgment heretofore entered in said cause by said Supreme Court of the State of Minnesota, to review which said writ of error has been sued out as aforesaid, and for such other and further order or relief as to said Supreme Court of the United States may seem just.

Further take notice that said motion to affirm will be based
4 upon the ground that although the record may show that said Supreme Court of the United States has jurisdiction, it is manifest that the question on which such jurisdiction depends is so frivolous as not to need further argument.

Further take notice that said motions will be made upon all the records, files and papers of said cause above entitled on file in said Supreme Court of the United States, which will be referred to in support thereof.

St. Paul, January 31st, 1899.

F. W. M. CUTCHEON,
Counsel for Defendant in Error.

5 SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1898.

Term No. 607.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, ET AL., Plaintiffs in Error,

vs.

HENRY A. GARDNER, Defendant in Error.

In Error to the Supreme Court of the State of Minnesota.

Motion to Dismiss Writ of Error or to Affirm.

Now comes Henry A. Gardner, defendant in error above named, through his undersigned counsel, and moves the court to dismiss the writ of error to the Supreme Court of Minnesota heretofore, to-wit, on or about the 21st day of October, 1898, sued out in this cause, or in case said writ shall not be dismissed, to affirm the judgment heretofore entered in said cause by said Supreme Court of the State of Minnesota, and for such other and further order or relief as to the court may seem just.

6 *Specification of Grounds of Motion.*

The motion to dismiss the writ of error, made above, is based upon the ground that this court has no jurisdiction to review the judgment of the Supreme Court of Minnesota heretofore entered in this cause, because:

1. This cause does not involve a Federal question; that is to say, there has not been drawn into question in this cause the validity of any treaty or statute of, or any authority exercised under, the United States, the decision whereon has been against the validity thereof. Nor has there been drawn into question in this cause the validity of any statute of, or any authority exercised under, any state on the ground that such statute or authority is repugnant to the Constitution, treaties or laws of the United States, the decision whereon has been in favor of the validity thereof. Nor has any claim been made in this cause of or to any title, right, privilege or immunity under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, the decision whereon was against the title, right, privilege or immunity so set up or claimed.

2. If any Federal question was involved in this cause when
7 the same was pending in the Supreme Court of Minnesota upon appeal, whatever the decision of that court thereon (if any) may have been, another question, not Federal, was also involved and decided adversely to the plaintiffs in error, and the decision of this latter question is sufficient to sustain the judgment of that court irrespective of what its decision (if any) may have been upon such Federal question.

The motion to affirm, made above, is based upon the ground that although the record may show that this court has jurisdiction, it is manifest that the question on which the jurisdiction depends is so frivolous as not to need further argument.

Statement of the Case.

The following are the facts in this case that are material to the questions here presented:

The Minnesota Western Railroad Company was incorporated with the powers usually conferred upon railroad companies, by an act of the legislature of the Territory of Minnesota, approved March 3d, 1853, (*Record, fol. 157;* Laws Minn. 1853, Ch. 10). The
8 act contained no provision whatever with reference to the liability of the shareholders of the company, and no general law upon the subject then existed. The act did include a provision that "the legislature may at any time amend or alter this act."

In 1858, the State of Minnesota was admitted to the Union under substantially its present constitution, which contained the following provision:

"Each shareholder in any corporation shall be liable to the amount of stock held or owned by him." (*Constitution Minnesota, Art. X., Sec. 3.*)

This provision (afterwards amended as stated below) has always remained part of the constitution of Minnesota, and has been construed by the Supreme Court of that State to impose an individual (double) liability upon shareholders, and to be self-executing. (See

Willis vs. Mabon, 48 Minn. 140.) In 1872, the provision was amended so as to read, "Each shareholder in any corporation (excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business), shall be liable to the amount of stock held or owned by him." But the exception thus inserted by amendment is not material to this case. (See *Opinion of*
9 *Supreme Court of Minnesota in this case, Record, fol. 186.*) This constitutional provision has remained in the form last quoted from the year 1872 to the present time.

Between 1853 and 1870, the charter of the Minnesota Western Railroad Company was twice amended in essential particulars. (See *Laws Minn. 1855, Ch. 65; Special Laws Minn. 1869, Ch. 117*), and by an act approved February 4, 1870, (*Special Laws Minnesota 1870, Ch. 57*), the company was completely re-constituted, and among other things, was authorized to change its name. It thereupon adopted the name "The Minneapolis and St. Louis Railway Company," and proceeded, for the first time, to survey and build several lines of railway, some of which were in operation prior to 1881. (*Record, fol. 160.*)

By an act approved March 2, 1881, (*Special Laws Minn. 1881, Ch. 113*), the Minnesota legislature, in addition to other powers thereby conferred, authorized the Minneapolis and St. Louis Railway Company and any other railway companies in the construction
10 of whose lines that company had aided, or whose lines were at the time held under lease by that company, to consolidate and form a *new consolidated* company. (See *Opinion of Supreme Court of Minnesota in this case, Record, fols. 184 to 186.*) The act contained various directions regulating the method of consolidation, the transfer of the constituent properties, the retirement of the stock of the old companies, the organization of the new company, and the issuance of the stock of the new company. It also contained the following provisions:

"Sec. 11. * * * Such new corporation shall possess all the powers, rights and franchises conferred upon each of the constituent corporations, *and shall be subject to all the restrictions and duties imposed by the laws of this state.*

"Sec. 12. Upon the consummation of said act of consolidation as aforesaid, all and singular, the rights, privileges, exemptions and franchises of each of said corporations previous to the same * * * shall be taken and deemed to be transferred to and vested in such new corporation without further act or deed * * * *
11 "Sec. 14. *All the provisions of the general laws of this state in regard to railroad corporations, shall be applicable to any new corporation formed by consolidation under the provisions of this act, except so far as the same shall not be applicable thereto by reason of the situation of portions of its line without this state*; provided, that nevertheless the privileges, franchises, exemptions and immunities hitherto *granted* to the Minneapolis and St. Louis Railway Company shall continue to and be vested in such new corporation, with the same effect as if originally granted thereto; * * * *"

Immediately subsequent to the passage of this act, the Minneapolis and St. Louis Railway Company, the Minneapolis and Duluth Railroad Company, the Minnesota and Iowa Southern Railway

Company, and the Fort Dodge and Fort Ridgely Railroad Company, (the first two being Minnesota corporations, and the last two being Iowa corporations), consolidated under and in accordance with the provisions of the act last mentioned, adopting the name "Minneapolis and St. Louis Railway Company." (*Record, fols. 157 and 158 and 56.*) The new company acquired all of the property
12 of its constituent companies and assumed all of their liabilities. (*Record, fol. 158.*) The stock of the constituent companies was taken up and the stock of the consolidated company issued in exchange therefor. (*Record, fols. 159 and 57 to 61.*) From 1881 to 1888, the new company, which is the corporation plaintiff in error in the case at bar, carried on the business theretofore conducted by its constituent companies, as well as other business. (*Record, fols. 160 and 161.*)

The defendant in error in this case is a judgment creditor of the new consolidated company, and the individual plaintiffs in error are shareholders in that company, who owned their stock at the time the judgment of defendant in error was obtained (December, 1887), or thereafter and prior to the institution of this suit. (*Record, fols. 167 to 169 and 170 and 171.*)

This is an action brought by defendant in error against the consolidated company and its shareholders, to enforce the so-called double liability imposed by the Minnesota constitution upon
13 shareholders in corporations of the class to which the corporation plaintiff in error belongs. The defendant in error in his pleadings contended that the consolidated company is a corporation brought into existence and organized under and by virtue of the act of 1881 above mentioned (*Record, fols. 24 and 100*), and that its stockholders are therefore subject to the liability imposed by the constitution which was then and still is in force, and that if this contention is erroneous and the corporation should be held to have been created by the act of 1853, the shareholders are nevertheless liable under the constitution for debts created after its adoption, among which is the claim of the plaintiff. (It will not be necessary upon this hearing to examine this alternative contention.) The plaintiffs in error by their pleadings contended that the railroad company was created by the act of 1853; (that the act of 1881 did not authorize a new corporation, but merely amended the constitution of a corporation already existing); and that inasmuch as the corporation was created by the act of 1853 which was passed, and, as they
14 claim, accepted prior to the adoption of the state constitution, that instrument could not operate to alter the rights of the shareholders of the corporation as established by the charter act and general rules of law in force at the time of its passage, one of which, they insist, was immunity from all personal liability upon the stock of the company. (*Record, fols. 83 and 84.*) The case was tried upon an agreed statement of facts before the District Court of Hennepin County, Minnesota. (*Record, fols. 102 to 124.*) That court directed judgment, in accordance with a stipulation of submission (*Record, fols. 154 and 155*) in favor of defendant in error for the full amount of his claim (*Record, fols. 172 and 173*). A motion for a new trial was made and argument heard thereon by three of the judges of the same court, who denied the motion (*Record, fols. 174*

and 175). Thereafter, judgment was entered in accordance with the directions contained in the findings of the trial court, and an appeal was taken from that judgment by the plaintiffs in error to the Supreme Court of Minnesota (*Record, fols. 175 to 177*). By that court, the judgment entered below was affirmed (*Record, fols. 188 and 190*). That tribunal based its decision upon the following propositions: (1) the act of 1881 authorized the creation of a new corporation; (2) the consolidated company was, as a matter of
15 fact, brought into existence, in pursuance of the authority conferred by this act of 1881, by the voluntary action of its constituent companies and of its shareholders; (3) the stock of any corporation brought into existence at that time, and therefore of this company, is subject to the liability imposed by the state constitution, the provisions of which, by the terms of the act itself, entered into and qualified the act authorizing the creation of the corporation. (*Record, fols. 178 to 188.*)

The court expressly declined to pass upon any other constitutional question presented by the record (*Record, fol. 188*). The judgment entered by the Minnesota Supreme Court was merely one of affirmance and for costs. (*Record, fol. 190.*) It is to bring this judgment to the Supreme Court of the United States for review that this writ of error has been granted.

January 31, 1899.

F. W. M. CUTCHEON,
Counsel for Defendant in Error.

16 SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1898,

Term No. 607.

MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, ET AL., Plaintiffs in Error,

vs.

HENRY A. GARDNER, Defendant in Error.

In Error to the Supreme Court of the State of Minnesota.

Brief for Defendant in Error.

The facts upon which these motions are founded are fully stated in the printed motion papers prefixed hereto. Therefore, it is not necessary to re-state them in this place.

Argument upon the Motion to Dismiss.

17 I.

At the very outset, we may eliminate from the discussion two questions which the plaintiffs in error have attempted to inject into the case by means of their second and third assignments of error and their fourth assignment, respectively. (*Record, fol. 16.*)

1. Plaintiffs in error assert, in substance, in their second and third assignments that Section 3, Article X, of the Minnesota Constitution, as construed by the Supreme Court of Minnesota and as applied to the facts of this case, conflicts with the Federal Constitu-

tion, in that it impairs the obligation of a contract contained in, and without due process of law deprives plaintiffs in error of property rights secured by, the Minnesota act of March 2, 1881.

Now, plaintiffs in error cannot raise in this court any Federal question that was not raised upon the record prior to judgment in the Supreme Court of Minnesota.

See *California Powder Works vs. Davis, 151 U. S. p. 393; Texas and Pacific Railroad Co. vs. Southern Pacific Co., 137 U. S. p. 48*, and cases cited.

18 An examination of the pleadings in this case and of the assignment of errors upon appeal to the Minnesota Supreme Court (*Record, fols. 12 to 14*), will demonstrate that the only attempt to raise a Federal question made by the plaintiffs in error in either the District Court or the Supreme Court of Minnesota, was this:

It was claimed that the Minnesota Western Railroad Company and the consolidated corporation are identical, being the same corporation under different names; that the charter act of the Minnesota Western Railroad Company passed in 1853, was and is the measure of the rights and liabilities of the shareholders in that company; that this act of 1853 constituted and still constitutes a contract between the State and the Minnesota Western Railroad Company and its shareholders (and, therefore, plaintiffs in error) to the effect that no double liability should ever be imposed upon these shareholders or their successors; that if Section 3, Article X, of the State constitution be held to have been intended to apply to the stockholders of the Minnesota Western Railroad Company, it must be held inoperative and void *pro tanto*, because if given such effect, it would impair the obligation of a contract protected by the guaranties of the Federal Constitution.*

19 That this was the only Federal question raised below is plain upon the face of the record. The answer of the individual defendants (plaintiffs in error) filed in the District Court, contains the following allegations: "That the said Minneapolis and St. Louis Railway Company was incorporated prior to the adoption or enactment of the constitutional provisions and statutes referred to. That said Minneapolis and St. Louis Railway was incorporated in the year 1853 under and pursuant to the provisions of Chapter 66 of the special laws enacted by the legislature of the Territory of Minnesota in the year 1853, under and by the name of the Minnesota Western Railroad Company, and which name was subsequently changed to the Minneapolis and St. Louis Railway Company, substantially as set forth in the first division of said complaint. That the liability of the stockholders of said Minneapolis and St. Louis Railway Company was fixed by said act of incorporation, and not otherwise; and that the constitutional provision and laws referred to in the complaint are not applicable to or binding upon these defendants in that behalf." (*Record, fols. 83 and 84*).

*Throughout this argument, in order to prevent the confusion that might otherwise arise on account of the identity in name of the constituent company and the consolidated company (both of which were called Minneapolis & St. Louis Railway Company), I shall speak of the corporation that was originally known as the Minnesota Western Railroad Company and after 1870 as the Minneapolis & St. Louis Railway Company, and was one of the companies that consolidated under the act of 1881, as the "Minnesota Western Railroad Company;" and shall speak of the the new corporation formed under the last mentioned act as the "Consolidated Company."

20 There is no other allegation in the pleadings of the plaintiffs in error which even by implication claims the benefit of any provision of the Constitution of the United States. In the assignment of errors, filed in the Minnesota Supreme Court, there are but three assignments by means of which any attempt is made to claim the protection of the Federal Constitution. They are as follows:

(1) "The court erred in holding that Section 3, Article X., of the State Constitution, if applied to the defendant railway company did not violate Section 10, Article I., of the Constitution of the United States, in that the provisions of said Section 3, Article X., impaired the obligation of the charter contract contained in said Chapter 66, laws of 1853, Territory of Minnesota. (*Assignment VII.; Record, fol. 12.*)

(2) "The court erred in holding that Section 3, Article X., of the State Constitution if applied to the defendant railway company is not in violation of the 14th Amendment of the Constitution of the United States, in that the State of Minnesota, by and through the provisions of said Section 3, Article X., assumed to impair and destroy rights theretofore vested in said defendants. (*Assignment VIII.; Record, fol. 13.*)

21 (3) "The court erred in holding that Section 3, Article X., of the State Constitution, if applied to the defendant railway company, is not in violation of the 14th Amendment to the Constitution of the United States in that the State of Minnesota, by and through the provision of said Section 3, Article X., assumes to abridge the privileges and immunities of the defendants as citizens and to deny to defendants the equal protection of the laws, and to deprive them of their property without due compensation or due process of law." (*Assignment IX.; Record, fol. 13.*)

Now, it will be noted that Assignment VII. expressly refers to the contract contained in the act of 1853 and to no other contract. The defendants (plaintiffs in error) planted themselves in the court below upon the proposition that their rights were secured and defined by the act of 1853, and that these rights could not be affected by a subsequently passed constitutional enactment. It is evident that Assignment VIII. and Assignment IX. are but repetitions of the same claim invoking the protection of the 14th Amendment of

22 the Federal Constitution. The rights referred to in Assignment VIII. are the rights "theretofore vested in said defendants;" that is to say, prior to the adoption of the State Constitution, and it is evident that the privileges and immunities referred to in Assignment IX., and the property referred to in the same assignment, are the privileges, immunities and property rights claimed by the defendant under the act of 1853. It is manifest, therefore, that no claim under the act of 1881 as an independent contract was ever made in the State Courts and, therefore, that a decision thereon adverse to plaintiffs in error cannot have been rendered. It follows that *this* claim cannot now operate to confer jurisdiction upon this court.

2. Error committed by the state court in the construction of a statute of the state cannot in and of itself confer jurisdiction upon this court. The citation of authorities to this proposition is certainly wholly unnecessary. Therefore, it is manifest that nothing contained in the fourth assignment of plaintiffs in error suggests a ground of jurisdiction.

23 II.

The ground thus having been cleared, we have left to consider the claim that actually *was* made by the plaintiffs in error in the courts below and the question whether in view of that claim and the decision of the Supreme Court of Minnesota there is any Federal question in the case.

First, then, just what was the claim made below by the plaintiffs in error, and how was it made?

The claim is distinctly formulated in their answer and is the only claim upon this branch of the case ever made in either of the lower courts. (See quotation *supra*, and *Record, fols. 83 and 84.*)

The defendant in error was asserting against these individual plaintiffs in error the right to recover from them certain amounts of money which he alleged they, as stockholders in the Consolidated Corporation, had become liable to pay under and in accordance with the provisions of Section 3, Article X. of the Minnesota Constitution.

The plaintiffs in error in answer set up:

24 (1) That by a contract made in 1853 between the State of Minnesota and the Minnesota Western Railroad Company, the shareholders of that company were granted perpetual immunity from all such liability and that the provision of the Minnesota constitution above mentioned, if applicable to the Minnesota Western Railroad Company, is void, so far as it purports to affect the shareholders of the Minnesota Western Railroad Company, being a law of a state impairing the obligation of this contract. (It is unnecessary to refer to the claim made under the Fourteenth Amendment to the Federal Constitution, as that amendment had not been adopted in 1858 when the Minnesota constitution became effective);

(2) That the Consolidated Corporation in which the plaintiffs in error are admittedly shareholders, is the Minnesota Western Railroad Company under another name.

Therefore, that the individual plaintiffs in error, as such shareholders, are exempt from all individual liability for the claim asserted by defendant in error.

The truth of each premise of the foregoing syllogism was
25 denied by defendant in error.

Now, if the Supreme Court of Minnesota had determined the Consolidated Company to be identical with Minnesota Western Railroad Company, it would have been obliged to pass upon the first proposition advanced by the plaintiffs in error (the major premise in the syllogism above stated) and, if in passing upon that proposition, the court had determined either that the act of 1853 did not contain an exemption such as was claimed by plaintiffs in error, or if admitting the existence of the exemption, it had held that nevertheless they were liable for debts contracted after the adoption of the Minnesota Constitution, it is plain that the record would have disclosed a Federal question and that this court would have possessed jurisdiction.

But the Supreme Court of Minnesota did nothing, whatever, of this sort. It did not in any way construe the act of 1853. It did not attempt to decide what rights or immunities that act secured to the Minnesota Western Railroad Company or its shareholders. It did not decide in any way, even by the remotest inference, whether

under the terms of the constitution of Minnesota, shareholders of the Minnesota Western Railroad Company were made liable personally for its debts, nor did it attempt to decide whether, if
26 Section 3, Article X. of the Minnesota Constitution by its terms applied to shareholders in the Minnesota Western Railroad Company, the provisions thereof as so applied, were or were not valid under the Federal Constitution. Upon the contrary. the court expressly repudiated any intention to decide any of these questions. At one point in its decision, it says: "Whatever may be the liability of the several (constituent) corporations we need not inquire, because the liability here sought to be enforced is one against individuals who have been and are stockholders in the new corporation." (*Record, fols. 185 and 186.*)

And again: "Other questions have been raised and discussed by the respective counsel, but a decision upon them by this court in this action is entirely unnecessary, and we express no opinion thereon." (*Record, fol. 188.*)

27 See also the *syllabus* (*Record, fol. 178*) which in Minnesota is required to be prepared by the court itself. (*G. S. Minn. 1894, § 4826.*)

In other words, the fact is that while the plaintiffs in error have drawn in question the validity of a provision of the State Constitution upon the ground of its being repugnant to the Constitution of the United States, no decision in favor of the validity of the State Constitution has been made, for the State Court did not reach the question whether the State Constitution applies to the shareholders of the Minnesota Western Railroad Company, much less the ulterior question whether if it so applies, it is repugnant to the Federal Constitution.

In the language of this court in *Israel vs. Arthur, 152 U. S. p. 361.* "It is not sufficient for the maintenance of our jurisdiction to review the judgments of State courts, that a right, title, privilege or immunity under the Constitution of the United States may have been claimed, but such right, title, privilege or immunity must have been denied."

See also *Eustis vs Bolles, 150 U. S. 361, p. 366.*

From this alone, it seems plain that this court possesses no jurisdiction to review this case.

III.

28 But we may go farther, for it does affirmatively appear that this cause was decided in the State court upon a ground not involving a Federal question, and that the decision thereon is sufficient to support the judgment rendered and would be sufficient even if the Federal question which the plaintiffs in error attempted to raise below had in fact been decided adversely to them.

What the Supreme Court of Minnesota did was to decide that the proposition constituting the minor premise of the syllogism upon which plaintiffs in error relied was untrue; that is to say, it decided that the Consolidated Corporation, in which the individual plaintiffs in error were admittedly shareholders, was not the Minnesota Western Railroad Company, or to put it still another way, that the con-

tract pleaded by the plaintiffs in error had been made not with the Consolidated Corporation, but with somebody else.

This question, whether the Consolidated Corporation and the
29 Minnesota Western Railroad Company are identical or distinct, was clearly at issue. It was put at issue by the pleadings (*Complaint, Record, fol. 24; Answer, Record, fols. 83 and 84; Reply, Record, fol. 100.*) A large share of the proof introduced upon the trial was directed to this point. So also was a very large share of the argument addressed to the Supreme Court of Minnesota. By uncontested evidence, it appeared that the old Minneapolis and St. Louis Railway Company (Minnesota Western Railroad Company) and other corporations had voluntarily organized as a consolidated corporation under the act of 1881, and it was conceded upon both sides that if the corporation so formed was in fact a new and distinct corporation, a personal liability attached to its stock under the State Constitution. The ultimate question to be decided was a question of fact, but the proof of the facts that bore upon it being undisputed, the conclusion depended upon the construction to be given to the act of 1881, under the authority of which the Consolidated Corporation had been organized. The Minnesota court construed this
30 statute, and having determined its meaning and thus the significance and effect of the organization of the Consolidated Company, determined as a fact that the new company and the old company are two distinct, separate corporate entities. (*Record, fols. 178, 184 and 185.*)

This court has no jurisdiction to review this finding of fact.

Dower vs. Richards, 151 U. S. 658, p. 666.

Nor does the circumstance that the Supreme Court in arriving at its conclusion was obliged to construe the statute of 1881 alter the situation. It was not contended below that that statute contained any part of the contract that plaintiffs in error had set up. Its meaning was material only in this, that by one side it was claimed that any consolidated company formed under its authority constituted a new corporation, and by the other side, that such consolidated company constituted a mere reorganization of the old company. Not only does the record bear out this assertion, but it is evident that there was no color of reason to claim that a contract made in 1881 had been impaired by a provision of a constitution adopted in 1858.

See *Lehigh Water Co. vs. Easton, 121 U. S. 388.*

31 Such being the case, this court has no jurisdiction to review the action of the State Court in construing the act in question. Upon the contrary, as has numberless times been said in the decisions of this tribunal, "the constructions given by the courts of the states to state legislation and to state constitutions are conclusive upon this court, with a single exception, and that is when it is called upon to interpret the contracts of states, 'though they have been made in the forms of law.'"

Jefferson Branch Bank vs. Skelly, 1 Black. 436, p. 443.

See also:

St. P. M. & M. Ry. Co. vs. Todd Co., 142 U. S. 282;
New Orleans vs. New Orleans Waterworks, 142 U. S. 79;
Millers Ex'rs. vs. Swann, 150 U. S. 132;
Eustis vs. Bolles, 150 U. S. 361, and cases cited.

The Supreme Court of Minnesota next went on to determine the application of Section 3, Article X. of the State Constitution and held that it was applicable to all shareholders in all corporations
32 (with certain immaterial exceptions), organized after the adoption of the constitution, and therefore to the Consolidated Company. (*Record, fols. 186 and 187.*)

To review this action of the State Court, this court has no jurisdiction.

See cases cited last *supra*, and

C. M. & St. P. Ry. Co. vs. Minnesota, 134 U. S. 418, p. 456.

The state court further held, at least by necessary implication, that the individual plaintiffs in error had, by taking their stock in and accepting the benefits of the consolidated corporation, voluntarily assumed the obligations attaching thereto under the Minnesota laws. (*Record, fols. 178, 185 and 186.*)

33 It also held that the constituent companies by taking advantage of the act of 1881, had waived such privileges and immunities as were granted by their original charters respectively but were not or could not be conferred upon, the new company. (*Record, fol. 186.*) This also was a decision upon a question of local law and not subject to review here. A decision of this question, however, was doubtless unnecessary, for it affirmatively appears that each of the individual plaintiffs in error acquired his stock in the consolidated company long after its organization. (*Record, fol. 171.*)

In fine, the effect of the decision of the Minnesota court, so far as it touched the claim made by the plaintiffs in error in that court, and which we are now considering, was simply that the Consolidated Company is not the same company that was organized under the act of 1853.

It seems plain that the decision of that court went off upon
34 a point that did not involve any Federal question. That its decision upon that point is sufficient to sustain its judgment requires no demonstration.

Such being the case, this court, as has been decided in many cases, will not entertain jurisdiction.

Klinger vs. Missouri, 13 Wall. 257, p. 263;
Johnson vs. Risk, 137 U. S. 300;
Eustis vs. Bolles, 150 U. S. 361, pp. 366 and 367;
Missouri Pac. Ry. Co. vs. Fitzgerald, 160 U. S. 556, p. 576.

This case, indeed, it would seem ought to be controlled by the decision of this court in *Eustis vs. Bolles, supra.* The essential facts appearing in that case were these: Eustis was a creditor of Bolles & Wilde, residents of Massachusetts. His claim accrued in 1880, when the subject of insolvency proceedings in that state was controlled by the provisions of its Public Statutes. Under these provisions, an insolvent debtor was required to surrender all his property, not exempt, to his assignee, and was entitled to a discharge if he paid 50 per cent of the debts proved, or if he paid less upon
35 procuring within six months the written consent of a majority in number and value of his creditors. In 1884 and 1885 were passed the "Composition Statutes," under which the insolvent may file a written proposal for composition, setting forth the amount he offers to his creditors. If he offers an amount equal to or exceeding 50 per

cent of the amount of his debts, he may obtain a complete discharge upon the written assent of a majority of his creditors in number and amount. If he offers less, three fourths in number and amount must assent. In either case, the discharge is complete and the debtor retains his property. Bolles & Wilde, having become insolvents, in 1887 obtained discharges under these "Composition Statutes," against the protest of Eustis who insisted that the statutes were unconstitutional and void as to his debts. He accepted his share in the distribution, however. Afterwards Eustis sued Bolles & Wilde for the unpaid balance of his claim. The Supreme Court of Massachusetts *assumed* that the "Composition Statutes" as to
36 antecedent creditors were unconstitutional. But, construing them, held that they were not absolutely *void* even as to them; that an antecedent creditor might waive his right to object to their invalidity as to his debt; and that under these statutes an offer of composition was an offer of a certain payment upon each debt in consideration of a full discharge therefrom. It therefore decided that by accepting the benefits of the composition, Eustis had estopped himself to insist upon the validity of the "Composition Statutes" as to his debt. (See *Eustis vs. Bolles, 146 Mass. pp. 414 to 417.*)

This court, upon considering the case, held that the Massachusetts court had decided the case upon questions of fact and local law, and that its decision upon these questions was sufficient to sustain its judgment, and that therefore this court had no jurisdiction over the case.

The close parallelism between that case and the case at bar is too evident to require commentary.

See also *Beaupre vs. Noyes, 138 U. S. 397.*

37 But it will be said (although this claim was not made in the State courts) that not only was the immunity claimed by plaintiffs in error granted by the act of 1853 to the Minnesota Western Railroad Company, but it was transferred to and vested in the Consolidated Company by the act of 1881, and that Section 3, Article X. of the Minnesota Constitution, if held to apply to shareholders in the Consolidated Company, has the effect of depriving them of the immunity thus granted and transferred. This position was most ingenuously formulated by counsel for plaintiffs in error in their brief in support of the petition for the writ of error granted by this court. They say: "True, the original company accepted the amendment of 1881, but such acceptance was upon the condition embodied in the act itself that the new corporation should retain all the 'privileges, franchises, exemptions and immunities' granted to the original corporation * * * * The act referred to was accepted as an entirety. Although in violation of the State Constitution
38 which forbids the creation of corporations by special act, its acceptance was held to work an estoppel to assert its unconstitutionality. The acceptance brings its benefits as well as its burdens. Its burden is the creation of a new corporation. Its benefits are the perpetuation and continuance of existing privileges, exemptions and immunities * * * The power of the legislature to continue the original immunities is not questioned and must be

conceded. If denied, the defendants cannot be held to an acceptance of the act when deprived of the most valuable condition."

Now this contention assumes several propositions that are untrue or beside the point. The Supreme Court of Minnesota did not hold the act of 1881 unconstitutional, but, expressing no opinion upon that subject, held that the plaintiffs in error were in any case, estopped to attack the act. The question of the power of the legislature to *continue* the immunity in question, if granted by the act of 1853, was never in the case, but its power to *transfer* that immunity to another corporation formed after the adoption of the State Constitution was not only questioned—it was flatly denied. It was also denied that the act of 1881 even *purported* to transfer that immunity to the Consolidated Company.

And the Supreme Court of Minnesota held (and this is a complete answer to the position of plaintiffs in error that we are considering) that the act of 1881 did *not* have the effect of trans-
39 ferring to or vesting in the Consolidated Company the immunity claimed. Its decision upon this point, as we have shown, is conclusive upon this court.

Even if the Supreme Court of Minnesota had held expressly (and it did not) that the act of 1881 *purported* to transfer this immunity to the Consolidated Company, but that it was ineffective to do this because of the co-existence of the paramount provisions of the State Constitution, such decision would not have given rise to a Federal question. This would have amounted merely to a construction of the act in connection with Section 3, Article X., of the State Constitution.

The question whether the plaintiffs in error should be held estopped, upon the facts of the case, to assert the unconstitutionality of an act of the Minnesota legislature, as tested by the provisions of the State Constitution, if they at the same time be denied some of the privileges the act purported to confer, is one of local law that was properly argued to, and was denied by, the State Court, but with which this court has no concern.

See *Eustis vs. Bolles, supra*, which is squarely in point.

40 The claim of plaintiffs in error that we are discussing simply resolves itself, when analyzed, into a claim that the obligation of a contract, to the benefits of which they assert they are entitled, has been impaired by means of an erroneous construction placed upon an independent enactment (the act of 1881) by the State courts. But even if this claim were sound, it would not make a case within the jurisdiction of this court. The power delegated to the Supreme Court of the United States is for the restraint of unconstitutional legislation by the states, and not for the correction of alleged errors committed by their judiciary. (See *Commercial Bank vs. Buckingham's Executors, 5 Howard 317, pp. 342 and 343.*)

"In order to come within the provision of the Constitution of the United States which declares that no state shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired,—it must have been impaired by a law of the state. The prohibition is aimed at the legislative power of the state, and not at the decisions of its courts, or the acts of

administrative or executive boards or officers, or the doings of corporations or individuals."

See also *Railroad vs. Rock, 4 Wall. 181;*
Knox vs. Bank, 12 Wall. 379;
Railway Co. vs. Todd Co., 142 U. S. 282.

42 Finally, if it be claimed that a Federal question has arisen by reason of the denial by the State Court of the claim of plaintiffs in error that the act of 1881 effected a transfer to the Consolidated Company of the immunities, if any, theretofore vested in the Minnesota Western Railroad Company (old Minneapolis and St. Louis Railway Company), such contention must be based upon the theory that the act of 1881 constitutes a contract to that effect protected by the Federal Constitution and impaired by Section 3, Article X. of the State Constitution. As we have seen, no such claim was made in the court below. But if it had been, it could not furnish ground for the jurisdiction of this court; for it is not enough that plaintiffs in error claim a contract. The record, *prima facie*, must show the existence of a contract and of some *subsequent* state law which is at least claimed to impair the validity of the contract.

New Orleans vs. N. O. Water Works, 142 U. S. 79, pp. 87 and 88;
Lehigh Water Co. vs. Easton, 121 U. S. 388, pp. 391 and 392.

43 But it affirmatively appears on the face of this record that the law which is claimed to impair the obligation of the contract, now said to be contained in the act of 1881, was enacted in 1858.

I respectfully submit that it affirmatively appears that this court has no jurisdiction of this cause, and that the writ of error should be dismissed.

Upon the Motion to Affirm.

If the court should be of the opinion that technically there is a Federal question in the case, and that strictly speaking the court has jurisdiction, then I submit that the question upon which such jurisdiction depends is so frivolous as to require no argument beyond what has already been submitted upon the motion to dismiss.

44 So far as I am able to discover, the only question that is even colorably Federal is that raised by the claim, not raised below, that the act of 1881 constitutes a contract transferring to and vesting in the Consolidated Company the immunity, if any, theretofore vested in the old company and that the obligation of this contract has been impaired by Section 3, Article X. of the Minnesota Constitution. If this claim does raise a Federal question, it can hardly be said, in view of the relative dates of the two enactments, to be one that is entitled to serious consideration.

And see for a case generally and closely analogous to this,
Shields vs. Ohio, 95 U. S. 319.

I respectfully submit that the writ should be dismissed or that the judgment of the Supreme Court of Minnesota should be affirmed.

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